

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.L. et al., Persons Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.L. et al.,

Defendants and Appellants.

E049363

(Super.Ct.No. J216399, J216400,
J216401, J216402 & J216403)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Wilfred J.
Schneider, Jr., Judge. Affirmed.

Hassan Gorguinpour, under appointment by the Court of Appeal, for Defendant
and Appellant V.L.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and
Appellant E.L.

Ruth E. Stringer, County Counsel, and Danielle E. Wuchenich, Deputy County Counsel, for Plaintiff and Respondent.

E.L. (Father) and V.L. (Mother) (collectively, the Parents) appeal from orders made in juvenile dependency proceedings concerning their five children. In September 2009, at a hearing held pursuant to section 366.26 of the Welfare and Institutions Code,¹ the juvenile court found that three of the children—M., G., and A.—were adoptable and terminated the Parents’ parental rights as to these children. At the same time, the court approved of planned permanent living arrangements for the two other children—V. and E.

Although the Parents filed notices of appeal from the separate orders pertaining to each of the five children, their arguments on appeal are directed only at the orders terminating parental rights as to M., G., and A. Accordingly, we deem the appeals from the orders pertaining to V. and E. to be abandoned. Regarding the orders terminating parental rights as to M., G., and A., the Parents contend the court abused its discretion in finding that the children were adoptable. Because there is substantial evidence to support the court’s findings, we affirm the court’s orders.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

I. SUMMARY OF FACTS AND PROCEDURAL HISTORY

A. *Background*

In July 2007, Father was arrested for grand theft and elder abuse arising from the alleged theft of \$250,000 from a man for whom Mother had a cleaning job.

Approximately two weeks later, Mother was arrested for the same crime.² San Bernardino County Children and Family Services (CFS) then removed the five children and filed petitions under section 300. At that time, M., G., and A. were ages six, two, and one, respectively. V. and E. were ages five and four, respectively.

CFS filed petitions concerning the five children pursuant to section 300. In addition to the arrest and incarceration of the Parents, CFS alleged the Parents engaged in a domestic violence relationship, Mother had a substance abuse problem, and the Parents engaged in criminal behaviors. In a detention report, a social worker described reports of sexual abuse by Father and a friend of Father against two of the children, drug abuse and neglect of the children by Mother, and incidents of domestic violence by Father against Mother. The children were detained and placed in foster care.

In a jurisdictional/dispositional report, a social worker reported that the children “are all in good health and have remained in good health while in placement. There are

² Mother was ultimately acquitted of charges of theft from an elder and grand theft, and convicted of receipt or concealment of stolen property arising from this incident. We affirmed the conviction in an unpublished opinion in case No. E046229. Father was acquitted of the charges arising from this incident. However, after he made statements to Mother that suggested he would kill the victim of the alleged theft, he was charged and convicted of threatening a victim or witness under Penal Code section 140, subd. (a). This court affirmed that conviction in case No. E047614.

no known serious health issues with any of the children.” The social worker further reported that the “children appear to be developmentally appropriate for their ages” and they “all appear to be doing well with no mental or emotional problems.” However, in a subsequent addendum report prepared for the jurisdictional and dispositional hearing, the social worker reported, “[s]ince the children have been placed into foster care there has been some reports of sexually acting out behaviors among the children.”

At the jurisdictional hearing in December 2007, the court declared the children to be dependents of the court and approved of a plan for reunification.

In an addendum report prior to the dispositional hearing, the social worker noted that the “children have been stable and they are doing very well in their placement. The children are all in school and have made remarkable improvements while in placement.” The social worker concluded that “the children should remain in their respective placements as they are doing very well and they have been stable.”

At the dispositional hearing, the court ordered the children to remain in CFS custody and that their placement in foster care continue.

In a report prepared for the six-month review hearing, the social worker reported that the “children have thrived” in their foster home placement, “are doing well in school[,] and behaving well with one another.” M., G., and A. are reportedly “on target” developmentally. No medical, educational, mental, or emotional problems were reported for G. or A. M. is doing well in school and “behaves pretty well” with the other children. However, he was attending counseling “to address issues of inappropriate touching and

kissing of his sister [V.].” There were also a “couple of incident reports . . . regarding minor fights in the home between [M.] and some of the other children.” The social worker further reported that all children “have made an excellent adjustment to placement.”

In March 2008, CFS received reports of physical abuse and neglect of the five children in the foster home. According to the social worker, although the placement appeared to be stable, “due to stressors” within the foster home, the foster mother “was no longer able to supervise the children well and therefore it is assumed that the children acted out aggressively with one another.” The children were then moved to another foster home. The social worker reported that the new “foster parents say that they see no problems at all with the behavior of the children, and that they are not at all aggressive toward one another. They cooperate with each other and play well together.”

In a status review report for the 12-month review hearing, the social worker reported that the children “have maintained very well in [their current] placement. . . . [They] have thrived in [the foster mother’s] home and at this time are doing well in school and behaving reasonably well with one another.” No significant medical problems were noted for any of the children. “[A.] is interacting well with other children in the home (relatives of the caregivers) as well as his siblings. The child appears happy and friendly.” G. “likes school very much” and has had “no reported problems.” M. is developmentally on target. He does well in school and “is above average in reading and math.” He is still attending counseling “to address issues [due to] past exposure to

pornography and domestic violence. He acts out at home in an angry way and there have been incident reports of him striking his siblings. He previously engaged in inappropriate touching and kissing of [his] sister [V.] . . . This is no longer a problem.” He “behaves pretty well with [the foster parents] and with the other children in the home”; however, there were reports “regarding minor fights in the home between [M.] and some of the other children.” The social worker concluded that the children have “significant behavioral problems due to being continually exposed to domestic violence between the parents and pornography.”

At the 12-month review hearing, the court terminated reunification services and set a hearing to be held pursuant to section 366.26.

In November 2008, all five children were placed in the same prospective adoptive home. Shortly afterward, V. and E. were removed from that home “due to serious behavioral problems[.]”³ (Capitalization omitted.)

B. Reports in Evidence at Section 366.26 Hearing

In the initial report filed for the section 366.26 hearing, the social worker reported the following regarding M., G., and A. A. was found by a doctor to be “a well child”; however, he is being evaluated for a “lazy eye,” is “highly allergic to certain foods and fibers,” had a double ear infection, and has “‘spots’ on his back.” He is developmentally

³ According to the social worker, “[V.] destroyed property in the adoptive home as well as [tore] her hair out on one occasion.” E. “exhibited a multitude of problems,” including temper tantrums, choking his brother A., throwing his sister G. to the ground, and pushing and punching M. “He bites, kicks, screams, and says cuss words.”

on target. The prospective adoptive parents reported that he is, at times, “loving and interactive both with them and his two siblings and at other times (on a daily basis) . . . throws temper tantrums which can last up to two hours at a time.” The prospective adoptive parents indicated that A. learned this behavior from his older brother E., who had been removed from the home.

G. is, medically, a “well child” and developmentally on target. However, she reportedly urinated in the hallway on one occasion and “has some difficulty in the area of sanitation in the bathroom and around toilet issues[.]” The prospective adoptive parents report that she has poor eye contact and poor language skills. She “tends to withdraw and become uncommunicative or sometimes throws tantrums, lies, and tries to manipulate.” She can be combative with adults and exhibits anger toward the prospective adoptive mother. However, G.’s “behavior has improved and the adoptive parents state they are more pleased at this time and can see progress.”

M. has scoliosis and nocturnal enuresis. “He has difficulty with sanitation issues around toilet training and the adoptive parents are trying to work with him on these issues.” He is on target developmentally and does well in school. M. acts out at home in an angry way and reportedly struck his siblings. He exhibits passive aggressive behavior, and has responded “inappropriately to situations with neighbors.”

The prospective adoptive parents for M., G., and A. told the social worker that “they need more time to adjust.” For this reason, CFS requested, and the court granted, a continuance of the section 366.26 hearing.

In April 2009, CFS filed an interim report. The social worker reported that M., G., A., and the prospective adoptive parents are engaging in intensive therapy, which “seems to be helping to improve the behaviors of the children, although the behaviors of the three children continue to be severe in nature.” The social worker stated that “adoption is likely.”

In an adoption assessment filed in April 2009, the social worker stated that “[A.], [G.], and [M.] are appropriate children to be adopted due to their ages of three, four, and seven years old respectively and the current caretaker’s willingness to pursue legalizing the parental relationship to the children through adoption.” Regarding A., the social worker reported that the child “seems to be meeting most psychosocial developmental milestones on schedule, however, he struggles with speech”; “he was assessed as developmentally delayed in speech so is eligible for speech services”; and he “exhibits no temper tantrums while” at day care. He “presents as a rough and tumble, affectionate boy.” The prospective adoptive parents report that his temper tantrums have decreased. Therapy, they report, has resulted in “a big shift in [A.]’s behaviors” and, “although he continues to be an ‘angry’ little boy, the family has been feeling successful in the applied techniques.”

“[G.] is an attractive 4-year-old Hispanic female with an impish grin.” Although she enjoys “adequate health,” she exhibits “some behavioral concerns that could have their basis in prenatal exposure” to substances. She is meeting most psychosocial developmental milestones. She “presents as an active, affectionate, and loving girl.”

However, she has had to be separated from other children in day care due to her physical aggression toward other children and has hurt the family pets. As a result of family therapy, the prospective adoptive family “feels that they are now moving in a forward motion with [G.]”

“[M.] is an attractive, somewhat shy, 7-year old Hispanic male.” He is “meeting most psychosocial developmental milestones on schedule.” He loves school and excels in it. However, he “struggles with not telling the truth” and “exhibits some hoarding behaviors[.]” He also “struggles with nocturnal enuresis and has had difficulties with urinating in the home in places other than the toilet[.]”

The social worker has observed “the beginnings of a loving bond and secure attachment between [A.], [G.], and [M.] and their prospective adoptive family.” A. was too young to make a statement regarding adoption; G. indicated that she would like to stay with her current caregivers; and M. indicated an understanding of adoption and said he wanted to “[s]tay here the whole time and not be moved.” (Italics omitted.) The children “are growing in their emotional attachment to the [prospective adoptive] family and consider them their parental figures. The [prospective adoptive] family is eager to adopt [the children] and feel as if they are part of their family.”

In July 2009, CFS filed a second addendum report. The social worker reported that M., A., and G. are in therapy for issues related to attachment disorder. The foster parents informed the social worker that they “are having a horrendous time with [A.] and his screaming fits” and “[G.] is even more difficult than [A.]” The social worker

concluded: “The behaviors currently exhibited by the children most likely have their roots in the family of origin system that includes substance abuse, domestic violence, and inappropriate sexual behavior by both the [P]arents and by family friends in the presence of the children. . . . The younger children have evidenced behaviors consistent with children who have lacked nurture and consistency in their care from the earliest stages of development. [E.], [A.], and [G.] have symptoms consistent with attachment disorder [¶] The most appropriate decision now is to allow these children to continue to work through the issues of their early childhoods with their family of origin in therapy and in stable and safe placement environments. This is best accomplished by suspending any contact between the five children and either parent at this time and proceeding with the termination of parental rights for [M.], [G.] and [A.]”

CFS filed another addendum report approximately six weeks later. Although the social worker observed improvements in A.’s behavior, she noted that “the children continue to have substantial difficulties with their behavior that primarily occurs while in the home.” G. and M. continue to “struggle with enuresis and that [G.] has encopresis on occasion also.” M. was again asked about being adopted and he responded that he did want to be adopted and that he wants to “stay forever with the [prospective adoptive] family.” The social worker concluded that the three children “are growing in their emotional attachment to the [prospective adoptive] family and consider them their parental figures. The [prospective adoptive] family is eager to adopt [the children] and feel as if they are part of their family.”

Another addendum report, filed in September 2009, describes ongoing behavioral problems, including frequent encopresis and enuresis, sexual behavior, and the need for constant supervision and guidance from the foster parents. A. continues to have temper tantrums and G. continues to urinate in inappropriate places. Nevertheless, the prospective adoptive parents “have exhibited an exceptional commitment to the children Despite the behaviors of the children[,] they have continued to provide on going [sic] supervision, limit setting, and a safe and nurturing environment for the three children.”

In the last report from CFS prior to the section 366.26 hearing, the social workers reported that the current placement of the children “remains stable” and that the “prospective adoptive parents remain committed to providing the care the children require in order to stabilize their behavior. The children are thriving in this placement and there are bonds between the caretakers and children. The caretakers remain committed to their plan of adoption of these three siblings.”

C. The Section 366.26 Hearing

At the section 366.26 hearing, an adoption worker on this case testified that the children are adoptable because “[t]hey’re of an adoptable age. I believe the behaviors, although at times appear severe and have been severe, it is being worked on, and that the family is open to working on these behaviors and meeting the children’s needs through a variety of treatment modalities.” In response to other inquiries regarding adoptability, the social worker testified that the children’s “behaviors are such that the adoptive family is

willing and able to engage with them and deal with these behaviors. Often it deals with more the adoptability and what can the family tolerate and what are they willing to stand for. That is one thing that has occurred over and over again. These families have been given opportunities to say, ‘We can’t handle it.’ And they have not. They have pursued other tactics. They have been involved in other therapies trying their best to meet the children’s needs, and I have seen progress.”

The adoption worker further testified she has observed the children in the prospective adoptive home over the preceding 10 months and they “are thriving in this home environment.” M., she said, “really wants to be adopted” by his current caregivers and “thinks this is really good for he and his brother and his sister also.” The children have bonded with the prospective adoptive parents and the prospective adoptive parents have “a strong bond towards these children[.]” The prospective adoptive parents have told the social worker that they are committed to the children and want to go forward with adoption.

After the arguments of counsel, the court stated that there is clear and convincing evidence that it is likely that M., G., and A. will be adopted and terminated the Parents’ parental rights as to each. As to V. and E., the court found that “[p]lanned permanent living arrangement with a specific goal of guardianship or adoption is the appropriate permanent plan.”

II. ANALYSIS⁴

In order for a juvenile court to terminate parental rights, it must find by clear and convincing evidence that the child will likely be adopted. (§ 366.26, subd. (c)(1).) We will uphold the juvenile court’s finding if the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that the child was likely to be adopted. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1153-1154.) ““‘Clear and convincing’ evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.]” [Citations.]” (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205-1206.) Still, we “‘presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.’ [Citation.]” (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.)

“The issue of adoptability requires the court to focus on the child, and whether the child’s age, physical condition, and emotional state make it difficult to find a person willing to adopt. [Citations.]” (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.)

⁴ Although the notices of appeal filed by the Parents indicate they are appealing from the trial court’s orders as to each of the five children, the arguments in their briefs on appeal address only the orders terminating parental rights as to M., G., and A. Therefore, we deem the appeals from the orders pertaining to V. and E. to be abandoned. (See *Wurzl v. Holloway* (1996) 46 Cal.App.4th 1740, 1754, fn. 1; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.)

“[T]here must be convincing evidence of the likelihood that adoption will take place within a reasonable time. [Citation.]” (*Ibid.*) It is not necessary that the child already be placed in a preadoptive home, or that a proposed adoptive parent be waiting. (§ 366.26, subd. (c)(1); *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) Nevertheless, “the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor’s age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent’s willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family. [Citation.]” (*In re Sarah M.*, *supra*, at pp. 1649-1650.) “When a child is deemed adoptable only because a particular caretaker is willing to adopt, the analysis shifts from evaluating the characteristics of the child to whether there is any legal impediment to the prospective adoptive parent’s adoption and whether he or she is able to meet the needs of the child.” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80; see also *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.)

As Mother and Father point out, the children in this case have severe behavioral issues. In April 2009, the children’s therapist diagnosed M. and G. as having reactive attachment disorder, attention deficit disorder, and posttraumatic stress disorder. A. was diagnosed as having oppositional defiant disorder and posttraumatic stress disorder. In their numerous reports, social workers described the problems, which include long-lasting tantrums, screaming fits, combative and defiant behavior toward adults, acting out

sexually, hitting others, anger, lying, destroying property, urinating in places other than the toilet, enuresis, and encopresis. These and other problems are discussed in detail in the reports and supporting evidence submitted at the section 366.26 hearing and were expressly considered by the court.

Although the serious problems undoubtedly weigh against the children's adoptability, there is also substantial evidence supporting the court's adoptability finding. After two years of juvenile dependency, the children are still young—three years (A.), five years (G.), and eight years (M.). They are generally in good physical condition and developmentally on target. A. is described as a "handsome, extremely active little boy" by the therapist, and as a "rough and tumble, affectionate boy" by the social worker. Therapy has helped "in calming many of [A.]'s behaviors[.]" G. is "an active, affectionate, and loving girl" and M. is an "attractive, somewhat shy" boy who loves and excels in school. Significantly, the children have prospective adoptive parents who have cared for the children for 10 months with full awareness of the children's behavioral problems. According to the most recent report from the social worker, the children and the prospective adoptive parents have developed a bond and the children are now "thriving." M. has made clear that he desires to be adopted by the prospective adoptive parents and believes that adoption would be "really good" for his younger siblings as well. The record does not reveal any legal impediment to adoption by the prospective adoptive parents.

Despite the serious and severe behavioral problems detailed in the record, the children are of adoptable ages, in generally good physical health, and have bonded with the prospective adoptive parents who are aware of the difficulties these children present and remain committed to their care. Such facts provide substantial evidence in favor of the court's adoptability findings. Therefore, the court did not abuse its discretion in making such findings.

III. DISPOSITION

The orders appealed from are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ King
J.

We concur:

/s/ Ramirez
P.J.

/s/ Hollenhorst
J.